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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. ~~[illegible]~~ 96

DISTRICT OF COLUMBIA, PETITIONER,

v.

WILLIAM H. COLTS.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

WILLIAM W. BRIDE,
Corporation Counsel, D. C.

ROBERT P. REEDER,
ROBERT E. LYNCH,
Of Counsel.

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PETITION.

The Corporation Counsel, on behalf of the District of Columbia, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on February 4, 1930, reversing the judgment of the Police Court for the District of Columbia.

Statement.

On July 20, 1929, an information was filed in the Police Court charging that the respondent:

> On the 19th day of July, 1929, in the District of Columbia, on O Street Southeast, * * * did then and there operate a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway recklessly, that is to say, at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway, the use thereof, the traffic thereon, and in such manner and condition so as to endanger property and individuals. * * *

This offense is generally referred to as "reckless driving." The respondent pleaded not guilty and demanded a trial by jury, which demand was denied and an exception noted. Upon a trial by the court he was convicted and sentenced to the Washington Asylum and Jail for a term of thirty days.

There was sufficient proof to sustain the charge alleged in the information (R. 4, 5). No evidence was offered on behalf of the respondent.

Question Presented.

The sole question presented in this case is whether or not the Constitution gave to the respondent the right to a trial by jury.

Specification of Errors to be Urged.

The Court of Appeals erred:

1. In holding that the respondent was entitled to a trial by jury.

2. In holding that the offense of reckless driving as defined and punished in the District of Columbia Traffic Act is not a petty offense within the meaning of the Constitution.

Reasons for Granting the Writ.

The question involved in this case is of great importance to the District of Columbia in the enforcement of traffic regulations, and may be of even greater importance throughout the country if Congress seeks more expeditious enforcement of the laws against minor offenses. The annual reports of the Commissioners of the District of Columbia show that more than fifteen hundred persons were charged with reckless driving in the District of Columbia in the fiscal year of 1928, and that nearly seventeen hundred persons were charged with that offense in the fiscal year of 1929. The requirement of trial by jury in such cases would seriously impede the effective administration of this and similar laws.

A test as to what constitutes a petty offense should be established by this Court.

This Court should determine whether offenses such as reckless driving are to be classed as "crimes," and

trials therefor as "criminal prosecutions," thereby entitling one to a trial by jury.

Wherefore, it is respectfully requested that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia be granted.

WILLIAM W. BRIDE,
Corporation Counsel.

APRIL, 1930.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

No opinion was rendered by the Police Court. The opinion of the Court of Appeals (R. 8) is printed in 58 Washington Law Reporter, 88.

Jurisdiction.

The judgment of the Court of Appeals of the District of Columbia was entered on February 3, 1930. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (*a*) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

A statement of the facts and of the errors relied on will be found in the petition.

Provisions of Constitution and of Statutes Involved.

Article III, section 2, clause 3, of the Constitution provides:

> The trial of all crimes, except in cases of impeachment, shall be by jury. * * *

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. * * *

Paragraph 1, of Section 44 of the Code of the District of Columbia, provides as follows:

> That prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury.

The District of Columbia Traffic Act, 1925 (Act of March 3, 1925, c. 443, 43 Stat. 1119), provides as follows:

> SEC. 4. The second paragraph of section 44 of the District of Columbia Code is hereby amended to read as follows: "In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be more than $300, or imprisonment as punishment for the offense may be more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury * * *."
>
> SEC. 6 (*e*). (Added by the Act of July 3, 1926, c. 739, sec. 4, 44 Stat. 812, 814.) All prosecu-

tions for violations of provisions of this Act, excepting section 11 only thereof, and all amendments to the said Act or regulations authorized and promulgated under the authority of said Act and amendments thereto, shall be in the police court of the District of Columbia by information filed by the corporation counsel of the District of Columbia or any of his assistants: *Provided,* That nothing herein contained shall deprive any person of the right of trial by jury.

SEC. 9. (As amended by the Act of July 3, 1926, c. 739, sec. 5, 44 Stat. 812, 814.)

(*b*) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

(*c*) Any individual violating any provision of this section where the offense constitutes reckless driving shall, upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days. * * *

ARGUMENT.

I.

This Court has said repeatedly that the Constitution does not require the trial of petty offenses by jury.

In *Schick* v. *United States,* 195 U. S. 65, where the court sustained the waiver of a jury in a trial where the maximum punishment was a fine of fifty dollars, the court declared that the provisions of the Constitution for trial by jury did not extend to petty offenses, saying (pp. 68, 70):

> The truth is, the nature of the offense and the amount of punishment prescribed rather than its place in the statutes determine whether it is to be classed among serious or petty offenses. * * *
>
> When the change was made from "criminal offenses" to "crimes," and made in the light of the popular understanding of the meaning of the word "crimes," as stated by Blackstone, it is obvious that the intent was to exclude from the constitutional requirement of a jury the trial of petty criminal offenses.

In *Callan* v. *Wilson,* 127 U. S. 540, the Police Court of the District of Columbia had tried a defendant who was charged with conspiracy and had denied him a jury in spite of his demand for one. This Court reversed the decision of the lower court. The sentence which was actually imposed in that case was a light one; but under the common law which was then in force in the District of Columbia (Rev. Stat. Dist. Col., sec. 92; *State* v. *Buchanan,* 5 Harris & Johnson (Md.) 317, 360) conspiracy was a misdemeanor which might have been punished by imprisonment which was at the discretion of the court and was not limited to one year (Rev. Stat. Dist. Col., secs. 1144, 1049; *United States* v. *Marshall,* 17 D. C. 34; *Palmer* v.

Lenovitz, 34 App. D. C. 303, 305). The defendant, therefore, was tried without a jury, against his protest, for an offense for which he might have been sentenced to imprisonment for a number of years at the discretion of the court. Congress had not attempted to change the common law as to the substantive offense and the punishment therefor. It was in such a case that the Court declared (p. 549) that the provision in Article III for trial by jury must be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by jury, and said that he was entitled to be so tried not only in cases of felony but also in some classes of misdemeanors, and that (p. 555):

> Without further reference to the authorities, and conceding, that *there is a class of petty or minor offenses, not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury, and which, if committed in this District, may, under the authority of Congress, be tried by the court and without a jury,* we are of opinion that the offense with which the appellant is charged does not belong to that class. (Italics ours.)

In *Patton et al.* v. *United States,* No. 53, October Term, 1929, decided April 14, 1930, this Court said:

> Trial by jury is the normal and, with occasional exceptions, the preferable mode of disposing of issues of fact in criminal cases *above the grade of petty offenses.* (Italics ours.)

II.

This Court has not laid down any precise test of petty offenses.

As already shown, this Court has indicated that the extent of the punishment and the nature of the offense are factors to be considered in determining whether or not an offense is petty. But the Court did not decide that the common law determines conclusively whether an offense is or is not petty. It did not deny the power of Congress to decide that an offense which was regarded as serious and was punished heavily in colonial times or in England of the seventeenth or eighteenth century should be regarded less seriously and punished more lightly at the present time. "It is not the mere name of a crime but the punishment therefor that characterizes it" (*People* v. *Craig*, 195 N. Y. 190, 197). There is nothing in the decisions of this Court which denies the power of Congress to erect its own standards as to the seriousness of offenses at the present day, to limit the punishment accordingly, and to order the trial of an offense which it regards as petty by summary procedure.

III.

Decisions of State courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment for one month, may be tried by summary procedure.

In *Bray* v. *State* (1903), 140 Ala. 172, a defendant was denied a jury in a prosecution for violation of an ordinance which punished failure to pay hack fare. He was convicted and sentenced to six months at hard labor. Trial without jury was sustained.

In *State* v. *Parker* (1924), 87 Fla. 181, an ordinance forbade any one to operate an automobile while intoxicated, under penalty of imprisonment for not less than thirty nor more than sixty days for the first offense. The defendant was tried by the municipal court without the right to trial by jury. He was found guilty and sentenced to imprisonment for thirty days. Trial without jury was sustained.

In *State* v. *Glenn* (1880), 54 Md. 572, an habitually disorderly person was tried without a jury and sentenced to six months in the house of correction. The trial was sustained. See especially pages 599 to 606. In *Lancaster* v. *State* (1899), 90 Md. 211, a statute authorized police justices to try for assaults without jury. The statute was held valid. The sentence was eighteen months imprisonment.

In *State* v. *Broms* (1918), 139 Minn. 402, the defendant was prosecuted under an ordinance for disorderly conduct, was convicted and sentenced to hard labor for ninety days. The court held that he was not entitled to a jury trial. In *State* v. *Anderson* (1925), 165 Minn. 150, the court decided that one who was accused of selling intoxicating liquor unlawfully in violation of an ordinance was not entitled to trial by jury. In that case the defendant was sentenced to imprisonment for ninety days.

In *Bell* v. *State* (1920), 104 Neb. 203, a State law forbade the possession and transportation of intoxicating liquors; magistrates and police courts were empowered to try without jury all violations of that act and all violations of ordinances where the penalty did not exceed a fine of one hundred dollars or imprisonment for three months. The statute was sustained.

In *State* v. *Ruhe* (1898), 24 Nev. 251, in *quo warranto* proceedings the court sustained a statute which provided that trials for the infraction of ordinances of a police nature should be summary in character before the police judge without a jury. By statute the jurisdiction of the police judge included cases in which he might impose fine or imprisonment or both.

In *Caruso* v. *Porter* (N. J. Sup., 1925), 130 Atl. 805, the court sustained Laws 1924, c. 211 p. 458, which provided that persons accused of driving automobiles while intoxicated should be tried before a recorder without jury (with appeal to court of common pleas and trial *de novo*) and, if convicted, punished by imprisonment of not less than thirty days nor more than six months in the county jail or workhouse. This law was sustained. In the case then before the court the defendant had been sentenced to jail. In *Latimer* v. *Wilson* (1926), 103 N. J. L. 159, the act cited above was sustained by the Court of Errors and Appeals. There the sentence was to thirty days in the county jail.

In *People* v. *Harding* (1921), 189 N. Y. Supp. 657, the court held that one who is accused of vagrancy is not entitled to trial by jury even though upon conviction he might be sentenced to three years in a correctional

institution or to one year in a jail or penitentiary. See also *People* v. *Stein* (1903), 80 App. Div. 357.

In *Byers and Davis* v. *Commonwealth* (1862), 42 Pa. St. 89, an act authorized the mayor or police magistrate to try a professional thief or pickpocket who frequented designated places for an unlawful purpose and if he were found guilty to commit him to hard labor in the county jail for not more than ninety days. The defendants were tried without a jury, were convicted, and were sentenced to hard labor in jail for ninety days. The act was sustained. See especially pages 94 to 96.

IV.

Congress has treated reckless driving as a petty offense and has properly done so.

The offense of reckless driving was not created in a criminal statute but by the Traffic Act of 1925, which deals simply with local traffic conditions. The offense is a common one. In a city of scarcely more than five hundred thousand inhabitants there are almost seventeen hundred charges of reckless driving tried before this one court in a single year. And, as shown by the State cases which have been cited, the maximum punishment for a violation of this portion of the act is relatively light. In view of these circumstances a charge of reckless driving may properly be tried without a jury.

V.

Conclusion.

The writ of certiorari should be granted.

Respectfully submitted,

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ROBERT P. REEDER,
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APRIL, 1930.